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HOUSE RESEARCH ORGANIZATION

daily floor report

Wednesday, April 24, 2019
86th Legislature, Number 51
The House convenes at 10 a.m.
Part One

Two bills are on the Major State Calendar, one joint resolution is on the Constitutional Amendments Calendar, and 69 bills are on the General State Calendar for second reading consideration today. The bills and joint resolutions analyzed or digested in Part One of today's *Daily Floor Report* are listed on the following page.

Dwayne Bohac
Chairman
86(R) - 51

HOUSE RESEARCH ORGANIZATION

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Wednesday, April 24, 2019
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Part 1

SUBJECT: Increasing state contributions to the Teacher Retirement System

COMMITTEE: Pensions, Investments and Financial Services — committee substitute recommended

VOTE: 11 ayes — Murphy, Vo, Capriglione, Flynn, Gervin-Hawkins, Gutierrez, Lambert, Leach, Longoria, Stephenson, Wu

0 nays

WITNESSES: For — Byron Hildebrand, Association of Texas Professional Educators; Vernagene Mott, Texas Association of School Boards; Rita Runnels, Texas American Federation of Teachers; Beaman Floyd, Texas Association of School Administrators; Ann Fickel, Texas Classroom Teachers Association; Timothy Lee, Texas Retired Teachers Association; Evalina Loya, Texas State Teachers Association-Retired; Donna Haschke; Felecia Owens; Louise Watkins; (*Registered, but did not testify*: Rene Lara, Texas AFL-CIO; Barry Haenisch, Texas Association of Community Schools; Mark Terry, Texas Elementary Principals and Supervisors Association; Dee Carney, Texas School Alliance; Lisa Dawn-Fisher, Texas State Teachers Association; and six individuals)

Against — Vance Ginn, Texas Public Policy Foundation

On — (*Registered, but did not testify*: Brian Guthrie, Teacher Retirement System)

BACKGROUND: Government Code sec. 825.404 sets the state's contribution to the Teacher Retirement System at an amount equal to at least 6 and not more than 10 percent of the aggregate annual compensation of all members of the retirement system during that fiscal year. Sec. 825.402 establishes rates of contribution for various members of the Teacher Retirement System.

DIGEST: CSHB 9 would set the state contribution to the Teacher Retirement System (TRS) at certain percentages of the aggregate annual compensation of all members of the retirement system according to the following schedule:

- 7.8 percent for the fiscal year beginning on September 1, 2019;
- 8.05 percent for the fiscal year beginning on September 1, 2020;
- 8.3 percent for the fiscal year beginning on September 1, 2021;
- 8.55 percent for the fiscal year beginning on September 1, 2022; and
- 8.8 percent for the fiscal year beginning on September 1, 2023.

The bill would retain the current member contribution rate of 7.7 percent of a member's annual compensation for compensation paid on or after September 1, 2019. That rate would be reduced by one-tenth of 1 percent for each one-tenth of 1 percent that the state contribution rate was less than the rate established under the bill for the applicable fiscal year.

The bill would require TRS to make a one-time supplemental payment of the lesser of $2,400 or the gross annuity payment to which the annuitant was entitled for the month preceding the month when TRS issued the payment.

The state would be required to appropriate to TRS an amount equal to the cost of the one-time supplemental payment. If the state did not transfer the appropriated amount, TRS could not issue the payment.

The bill would take effect September 1, 2019.

SUPPORTERS SAY:

CSHB 9 would make the Teacher Retirement System actuarially sound by incrementally increasing state contributions over the 2020-2024 fiscal years, providing for an ultimate increase of 2 percent over the five-year period. TRS serves more than 420,000 retirees, many of whom do not receive Social Security benefits. Recent decisions by the TRS Board of Trustees to adjust plan participant life expectancies and projected investment return assumptions have contributed to the system being actuarially unsound as defined by state law. Investing in the fund now would be financially prudent, making it more likely that the state could meet its promises to current teachers and provide increased benefits to retirees.

The bill would provide retired school employees with a one-time supplemental payment, or "13th check," of up to $2,400. This extra pension benefit would help retired educators pay for increased expenses, including higher TRS health insurance costs.

While some have suggested moving younger teachers to a less costly defined contribution retirement plan, Texas would still need to make its existing defined benefit pension system actuarially sound, as CSHB 9 would do.

At a time when the Legislature is working to improve school finance and increase teacher pay, it should not require school districts and teachers to contribute more money to TRS, as would occur under the Senate's plan.

OPPONENTS SAY:

While CSHB 9 would improve the funding situation for TRS, the pension system would still be underfunded. While the increased state contributions would allow the fund to be considered actuarially sound under state law, the fund's amortization period of 30 years would remain above the preferable target range of 10 to 25 years under Pension Review Board funding guidelines. Future generations would bear the financial risk if TRS market expectations were not met.

New teachers should be offered the option to join TRS or a program similar to the defined contribution plan offered to faculty at higher education institutions and by many private employers. Such plans offer portability between public and private sector jobs and a shorter time frame for a teacher to become fully vested.

The cost of the one-time supplemental payment would add to the rising state budget and the burdens of taxpayers, who include teachers and retirees.

OTHER OPPONENTS SAY:

A better approach would be to follow the Senate's plan to increase TRS contributions from all participants, including school districts and active teachers. Current teachers and school districts, along with the state, should play a role in making the pension system actuarially sound. The Senate plan would provide a smaller $500 payment supplemental payment but would cost the state less than half of the amount of the House plan.

NOTES:

According to the Legislative Budget Board, the bill would have an estimated negative impact of $1.3 billion on general revenue related funds through fiscal 2020-21. The bill would make the TRS pension fund actuarially sound by reducing the amortization period to 30 years, according to the Legislative Budget Board's actuarial impact statement.

SUBJECT: Increasing certain distributions to the Available School Fund

COMMITTEE: Public Education — favorable, without amendment

VOTE: 13 ayes — Huberty, Bernal, Allen, Allison, Ashby, K. Bell, Dutton, M. González, K. King, Meyer, Sanford, Talarico, VanDeaver

0 nays

WITNESSES: For — (*Registered, but did not testify*: Priscilla Camacho, Dallas Regional Chamber; Mary Cullinane, League of Women Voters of Texas; Will Holleman, Texas Association of School Boards; Paige Williams, Texas Classroom Teachers Association; Mark Terry, Texas Elementary Principals and Supervisors Association; Christy Rome, Texas School Coalition; Robert Norris; Calvin Tillman; Al Zito)

Against — None

On — (*Registered, but did not testify*: Rusty Martin, School Land Board; Eric Marin and Mike Meyer, Texas Education Agency; Keven Ellis)

BACKGROUND: Texas Constitution Art. 7, sec. 5 and Education Code ch. 43 establish requirements for the Permanent School Fund (PSF) and distributions made from it to the Available School Fund (ASF). The State Board of Education manages financial assets for the PSF and the School Land Board, an independent entity of the General Land Office, oversees the management, sale, and leasing of more than 13 million acres of PSF land. This land generates revenue that the board uses to purchase additional real estate and make investments that help fund public education through the ASF.

DIGEST: HB 4611 is the enabling legislation for HJR 151 by Huberty, which would double the cap in the Texas Constitution for distributions that the General Land Office or an entity with responsibility for managing Permanent School Fund land or other properties could at its sole discretion distribute to the Available School Fund. The bill would include the General Land Office annual distributions as a component of the funds distributed from

the PSF to the ASF.

The bill would take effect January 1, 2020, only if the constitutional amendment providing for increased distributions from the General Land Office to the ASF as proposed by HJR 151 was approved by voters.

SUPPORTERS SAY:

HB 4611 would allow for improved public school funding should voters remove a constitutional cap on the amount of revenue that could be distributed to school districts through the Available School Fund (ASF) from assets managed by the School Land Board. Recent investment returns obtained by the land board have been sufficiently high to allow for annual distributions above the $300 million cap. HJR 151 would double the cap to $600 million, allowing for greater direct distributions to the ASF should the land board decide to pursue that option. The land board would retain discretion to distribute revenue levels below the cap should returns be lower in a given year.

As the Permanent School Fund's assets managed by the land board grow and improve in their performance, the Legislature should take advantage of the opportunity to increase revenue available through the ASF for instructional materials and other school funding needs.

OPPONENTS SAY:

As provided by HJR 151, for which HB 4611 is the enabling legislation, increasing the amount of revenue that the land board could directly contribute to the ASF could exacerbate the complicated funding relationship between the School Land Board and the State Board of Education. The land board has regularly distributed the majority of its investment proceeds to the State Board of Education for placement in the PSF, thereby increasing the amount from which the education board makes its percentage-based required biennial distribution to the ASF. Were the land board to send a larger amount directly to the ASF, such an action could result in lower overall school funding.

NOTES:

HB 4611 is the enabling legislation for HJR 151 by Huberty, which is on the Constitutional Amendments Calendar for second reading consideration today.

SUBJECT: Allowing increased distributions to the Available School Fund

COMMITTEE: Public Education — favorable, without amendment

VOTE: 13 ayes — Huberty, Bernal, Allen, Allison, Ashby, K. Bell, Dutton, M. González, K. King, Meyer, Sanford, Talarico, VanDeaver

0 nays

WITNESSES: For — (*Registered, but did not testify*: Chris Masey, Coalition of Texans with Disabilities; Priscilla Camacho, Dallas Regional Chamber; Mary Cullinane, League of Women Voters of Texas; Will Holleman, Texas Association of School Boards; Paige Williams, Texas Classroom Teachers Association; Mark Terry, Texas Elementary Principals and Supervisors Association; Christy Rome, Texas School Coalition; Calvin Tillman; Al Zito)

Against — None

On —Rusty Martin, School Land Board; Keven Ellis; (*Registered, but did not testify*: Eric Marin and Mike Meyer, Texas Education Agency)

BACKGROUND: Texas Constitution Art. 7, sec. 5 and Education Code ch. 43 contain requirements for the Permanent School Fund (PSF) and distributions made from it to the Available School Fund (ASF). The State Board of Education manages financial assets for the PSF and the School Land Board, an independent entity of the General Land Office, oversees the management, sale, and leasing of more than 13 million acres of PSF land. This land generates revenue the board uses to purchase additional real estate and make investments that help fund public education through the ASF.

DIGEST: HJR 151 would amend the Texas Constitution to increase from $300 million to $600 million the amount that the General Land Office or an entity other than the State Board of Education could in its sole discretion distribute to the Available School Fund each year in revenue derived during that year from the land or properties it manages.

The ballot proposal would be presented to voters at an election on November 5, 2019, and would read: "The constitutional amendment allowing increased distributions from the available school fund."

SUPPORTERS SAY:

HJR 151 would improve funding for public schools by doubling the constitutionally authorized annual distribution from the School Land Board to the Available School Fund (ASF). Recent investment returns realized by the land board would have allowed greater annual direct distributions to the ASF were it not for the $300 million cap in the Texas Constitution. As the Permanent School Fund's assets managed by the land board grow and improve in their performance, the Legislature should take advantage of the opportunity to make more revenue available through the ASF for school districts to purchase instructional materials and meet other funding needs.

While some have raised concerns that the proposed constitutional amendment could result in less overall school funding coming from the PSF to the ASF, the Legislature has made it clear that it expects the School Land Board and the State Board of Education to work together to maximize funding for the schoolchildren of Texas.

OPPONENTS SAY:

By increasing the amount of revenue the land board could directly contribute to the ASF, HJR 151 could exacerbate the complicated funding relationship between the School Land Board and the State Board of Education, each of which have responsibilities for managing the PSF. The land board has regularly distributed the majority of its investment proceeds to the State Board of Education (SBOE) for placement in the PSF, thereby increasing the amount from which SBOE makes its percentage-based required biennial distributions to the ASF. Were the land board to send a larger amount directly to the ASF, such an action could result in lower overall school funding.

As the Legislature considers restructuring the management of the PSF this session, it should amend HJR 151 to allow flexibility should the State Board of Education or another entity be placed solely in charge of managing PSF assets.

NOTES:

HB 4611 by Huberty, the enabling legislation for HJR 151, is on the Major State Calendar for second reading consideration today.

According to the Legislative Budget Board, HJR 151 would have a cost of $177,289 in general revenue in fiscal 2020 to publish the resolution.

SUBJECT: Allowing nonprofit organizations to operate repurposed school campuses

COMMITTEE: Public Education — committee substitute recommended

VOTE: 13 ayes — Huberty, Bernal, Allen, Allison, Ashby, K. Bell, Dutton, M. González, K. King, Meyer, Sanford, Talarico, VanDeaver

0 nays

WITNESSES: For — Dan Fishman, IDEA Public Schools; Orlando Riddick, Midland ISD; (*Registered, but did not testify*: Bibi Katsev, District Charter Alliance; Seth Rau, San Antonio ISD; Molly Weiner, Texas Aspires Foundation)

Against — (*Registered, but did not testify*: Mark Terry, Texas Elementary Principals and Supervisors Association)

On — Von Byer, Texas Education Agency; (*Registered, but did not testify*: Eric Marin and Joe Siedlecki, Texas Education Agency)

BACKGROUND: Education Code ch. 39A subch. C governs campus turnaround plans, which school districts are required to prepare and submit to the commissioner of education if a campus in their district has received an unacceptable performance rating for two consecutive school years. The commissioner may or may not approve the plan. If the plan is not approved, the commissioner must order the appointment of a board of managers to govern the school district, alternative management of the campus, or closure of the campus. If the plan is approved, campuses must meet certain performance requirements.

If a campus turnaround plan is approved and the campus is considered to have an unacceptable performance rating for three consecutive school years after the campus submitted the plan, the commissioner is required to either order the appointment of a board of managers to govern the school district or to close the campus.

If the commissioner closes the campus, the campus can be repurposed to

serve students at that campus location only if the commissioner:

- finds that the repurposed campus offers a distinctly different academic program and serves a majority of grade levels not served at the original campus; and
- approves a new campus identification number for the repurposed campus.

Under this scenario, the majority of students assigned to the closed and repurposed campus could not have attended that same campus in the previous school year.

DIGEST:

CSHB 4205 would allow the commissioner of education, upon closing a school campus in connection with a campus turnaround plan, to repurpose the campus if the repurposed campus offered a distinctly different academic program and was operated under a contract, approved by the school district board of trustees, with a nonprofit organization exempt from federal taxation.

The nonprofit organization would be required to have a governing board that was independent of the district and a successful history of operating school district campuses or open-enrollment charter schools that cumulatively served at least 10,000 students, a majority of which had been assigned an overall performance rating of at least a B during the preceding school year.

The commissioner would have to approve a new campus identification number for the repurposed campus.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2019.

SUPPORTERS SAY:

CSHB 4205 would allow failing schools that were slated for closure to re-open under the operation of a high-performing nonprofit organization. This would give school districts another option for failing schools and could help prevent difficult school closures.

A school that re-opened as a nonprofit charter school could serve the same group of students and grade levels as it did previously, rather than serving different grade levels and dispersing students across different schools as re-opened schools are currently required to do. This would help schools maintain their strong communities and rich histories.

The bill would require the nonprofit organization that re-opened a campus to have a governing board that was independent of the district's school board. This would provide a necessary layer of separation between school districts and schools that had previously received poor performance ratings under the control of the district's school board. The district's school board still would maintain significant control over the contract with the nonprofit organization.

OPPONENTS SAY:

CSHB 4205 would transfer governance of certain schools away from school districts and to independent boards. This could reduce the public's access to important information that would have been easily available if a public school district operated the school.

SUBJECT: Requiring school districts to ensure sufficient time to teach curricula

COMMITTEE: Public Education — committee substitute recommended

VOTE: 12 ayes — Huberty, Bernal, Allison, Ashby, K. Bell, Dutton, M. González, K. King, Meyer, Sanford, Talarico, VanDeaver

0 nays

1 absent — Allen

WITNESSES: For — (*Registered, but did not testify*: Lonnie Hollingsworth, Texas Classroom Teachers Association; Lisa Dawn-Fisher, Texas State Teachers Association)

Against — Mark Terry, TEPSA, TASB, TACS, TASA; (*Registered, but did not testify*: Barry Haenisch, Texas Association of Community Schools; Grover Campbell, Texas Association of School Boards; Dee Carney, Texas School Alliance)

On — (*Registered, but did not testify*: Monica Martinez, Texas Education Agency)

DIGEST: CSHB 4310 would require school districts to adopt a recommended or designated scope and sequence for a subject in the required curriculum that allows for sufficient time to be provided for teachers to teach and for students to learn the essential knowledge and skills for the subject and grade level.

The bill would prohibit districts from penalizing a teacher who did not follow a recommended or designated scope and sequence for such a subject if the teacher's deviation stemmed from the teacher's determination that the teacher's students needed more or less time in a specific area to demonstrate proficiency in the essential knowledge and skills for that subject and grade level.

The bill would apply beginning with the 2019-2020 school year.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2019.

SUPPORTERS SAY:

CSHB 4310 would recognize the right of teachers to determine the level of instruction based on the students' mastery of the material rather than a timetable imposed from outside the classroom. This bill would ensure that teachers were not penalized for organizing class time around the needs of their students.

OPPONENTS SAY:

CSHB 4310 would remove a district's ability to ensure that students were being taught the essential knowledge and skills related to a given subject. Scope and sequence requirements are a valuable tool districts use to ensure students meet state curriculum guidelines. To help students achieve these goals, districts must be able to require teachers to adhere to the relevant guidelines.

SUBJECT: Implementing the results of a voter referendum on daylight saving time

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 11 ayes — Phelan, Hernandez, Deshotel, Guerra, Harless, Holland, Hunter, P. King, Parker, E. Rodriguez, Springer

1 nay — Smithee

1 absent — Raymond

WITNESSES: For — Ben Farmer, Endtimechangetexas.com; (*Registered, but did not testify*: James Dickey, Republican Party of Texas; Phil Bunker, Teamsters Joint Council 58; Jason Vaughn, Texas Young Republicans; and seven individuals)

Against — Martha Habluetzel, Campaign to Opt Out of Daylight Saving Time in Texas

BACKGROUND: Government Code sec. 312.016 establishes the standard time in Texas as central standard time and the standard time in a region of the state as mountain standard time.

15 U.S.C. sec. 260(a) allows any state to exempt itself from daylight saving time. A state that covers more than one time zone, such as Texas, may exempt either the entire state or the area of the state lying within any time zone.

DIGEST: HB 3784 would implement the results of a statewide referendum on the November 5, 2019, general election ballot. This referendum would allow Texas voters to indicate a preference for either exempting the state from daylight saving time or observing daylight saving time year-round.

If voters indicated a preference for exempting the state from daylight saving time, HB 3784 would exempt Texas from provisions in federal law that establish daylight saving time. The exemption would apply to all portions of the state and would take effect January 1, 2020.

If the majority of votes cast in the statewide referendum were in favor of observing daylight saving time year-round, the bill would require Texas, acting as authorized under federal law, to observe daylight saving time year-round. That provision would take effect only if the U.S. Congress enacted legislation that authorized Texas to observe daylight saving time year-round. If Congress did not enact such legislation, this provision of HB 3784 would have no effect.

The proposition for the referendum would have to be printed on the ballot under the heading "Referendum Proposition" immediately following the proposed constitutional amendment authorizing a statewide referendum to allow the voters to choose between exempting the state from daylight saving time and observing daylight saving time year-round.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2019.

SUPPORTERS SAY:

HB 3784 would settle the longstanding debate about whether Texas should stay on either standard time or daylight saving time year-round by implementing the results of a statewide referendum to be held on the November 2019 ballot. Staying on the same time year-round would end the requirement that Texans change their clocks twice a year to "spring forward" and "fall back." These time changes disrupt people's circadian rhythms and can cause sleep disruption that has been linked to increased accidents and health concerns.

If voters chose to stay on standard time year-round, there would be no need to move clocks forward an hour in March 2020. Federal law allows this exemption, and Arizona and Hawaii have used it without causing confusion for their residents. If voters selected year-round daylight saving time, Texas would add its voice to that of other states asking Congress to allow that choice.

OPPONENTS SAY:

HB 3784 would give Texas voters a false choice to stay on daylight saving time year-round, which may not be an option under federal law. Congress has not responded to similar initiatives from California and

Florida, and Texas should not spend resources on an effort that may be futile.

If voters chose to exempt Texas from daylight saving time, it could be confusing for residents when most of the country was still following the mandate. Texas might want to wait for Congress to eliminate daylight saving time before taking action that could isolate it from other states.

NOTES:

HB 3784 is the enabling legislation for HJR 117 by Larson, which would amend the Texas Constitution to allow the Legislature to hold a statewide referendum that asked voters to indicate a preference for either exempting Texas from daylight saving time or observing daylight saving time year-round. HJR 117 was passed to engrossment by the House on April 23.

SUBJECT: Making personal information in application for disaster funds confidential

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 12 ayes — Phelan, Hernandez, Deshotel, Guerra, Harless, Holland, Hunter, P. King, Parker, E. Rodriguez, Smithee, Springer

0 nays

1 absent — Raymond

WITNESSES: For — (*Registered, but did not testify*: Russell Mullins, Alterity Solutions, Inc.; Joe Buser, Traveling Coaches, Inc.)

Against — (*Registered, but did not testify*: Charlie Duncan, Texas Housers)

On — (*Registered, but did not testify*: Heather Lagrone, Texas General Land Office)

BACKGROUND: Government Code sec. 552, the Public Information Act, requires governmental bodies to disclose information to the public upon request, unless that information is considered confidential by constitutional or statutory law or judicial decision and excepted from public disclosure.

DIGEST: HB 3175 would make confidential the name, Social Security number, house number, street name, telephone number, and any other information the disclosure of which would identify an individual or household that applied for state or federal disaster recovery funds.

The street name and the amount of funds awarded to an individual or household would not be confidential after the date funds were awarded.

The bill would take effect September 1, 2019.

SUPPORTERS SAY: HB 3175 would protect disaster victims from identify theft by making sensitive personal information included in an application for disaster

recovery funds confidential. Identity thieves use sensitive personal information found in publicly available databases to steal financial information and commit fraud and other crimes. Disaster victims are in a vulnerable position from losing their homes and financial security, and they should be better protected from identity theft.

The bill would balance the need for transparent expenditure of public funds with personal privacy. To ensure transparency and accountability in the dispersal of recovery funds, an amendment could adjust the bill to allow for the release of census block group information in addition to the street name after funds were awarded.

OPPONENTS SAY:

HB 3175 could make it difficult to track federal disaster recovery funds by preventing access to necessary information. Releasing the street name and amount of funds after they were awarded would not support an assessment of who applied for versus received assistance, reducing transparency and accountability in the dispersal of disaster funds.

NOTES:

The bill author intends to offer a floor amendment that would specify that the street name and census block group and amount of disaster recovery funds awarded were not confidential after the date funds were awarded.

The amendment also would substitute "a person" for "an individual" in the bill's provisions.

SUBJECT: Requiring health plans to treat telehealth and in-person coverage equally

COMMITTEE: Insurance — favorable, without amendment

VOTE: 8 ayes — Lucio, Oliverson, S. Davis, Julie Johnson, Lambert, Paul, C. Turner, Vo

0 nays

1 absent — G. Bonnen

WITNESSES: For — Dan Finch, Texas Medical Association; (*Registered, but did not testify*: Cynthia Humphrey, Association of Substance Abuse Programs; Christine Yanas, Methodist Healthcare Ministries of South Texas, Inc.; Eric Kunish, National Alliance on Mental Illness-Austin; Mike Meroney, Texas Association of Health Underwriters; Nora Belcher, Texas E-Health Alliance; Cameron Duncan, Texas Hospital Association; Kevin Stewart, Texas Psychological Association; Bonnie Bruce, Texas Society of Anesthesiologists)

Against — None

On — (*Registered, but did not testify*: Doug Danzeiser, Texas Department of Insurance)

BACKGROUND: Insurance Code secs. 1455.004(a) and (b) prohibit a health benefit plan from excluding from coverage a covered health service or procedure delivered by certain health professionals to a patient as a telemedicine or telehealth service solely because the covered service or procedure is not provided through an in-person consultation. A health plan is allowed to require a deductible, copayment, or coinsurance for telemedicine or telehealth services; however, these amounts may not exceed the amount required for covered services provided through in-person consultations.

Some suggest that some health plans continue to treat telemedicine services as covered and reimbursable medical services only if those services are provided through a third-party vendor using a specific

platform. Observers suggest clarification is needed to ensure patients receive telemedicine services regardless of the technological platform used to deliver such care.

DIGEST:

HB 3345 would require a health benefit plan to provide coverage for telemedicine or telehealth services on the same basis that the plan provided coverage for an in-person service or procedure.

A health plan could not:

- limit, deny, or reduce coverage for a covered telemedicine or telehealth service based on the health professional's preferred technological platform, as defined in the bill, for delivering the service or procedure; or
- impose an annual or lifetime maximum on telemedicine or telehealth coverage other than the annual or lifetime maximum that applied to all items covered under the plan.

The bill would specify that Insurance Code sec. 1455.004(b) did not authorize a health plan to charge a separate deductible that applied only to a covered telemedicine or telehealth service.

The bill would take effect September 1, 2019, and would apply to a health benefit plan issued on or after January 1, 2020.

SUBJECT: Prohibiting withholding most dates of birth under public information laws

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 13 ayes — Phelan, Hernandez, Deshotel, Guerra, Harless, Holland, Hunter, P. King, Parker, Raymond, E. Rodriguez, Smithee, Springer

0 nays

WITNESSES: For — Ray Allen, PublicData.com; David Foy, RELX; Teri Flack, Texas State Genealogical Society; (*Registered, but did not testify*: John Bridges, Austin American-Statesman, Freedom of Information Foundation of Texas, Texas Press Association; Lorena Campos, City of Dallas; Dave Jones, Clean Elections Texas; Anthony Gutierrez, Common Cause Texas; Chelsy Hutchison, Experian; Kelley Shannon, Freedom of Information Foundation of Texas; Michael Coleman, Public Citizen; Jeff Heckler, PublicData.com; Jack Erskine, R.L. Polk; Michael Schneider, Texas Association of Broadcasters; Donnis Baggett and Bill Patterson, Texas Press Association; Stephanie Ingersoll)

Against — None

On — (*Registered, but did not testify*: Justin Gordon, Office of the Attorney General)

BACKGROUND: Government Code sec. 552, the Public Information Act, requires governmental bodies to disclose information to the public upon request, unless that information is considered confidential by constitutional or statutory law or judicial decision and excepted from public disclosure.

Sec. 552.102 excepts information in a personnel file from public disclosure, except that all information in the file of an employee of a governmental body is to be made available to that employee as public information.

Some have noted that access to dates of birth in public records has been closed off since the 2015 Third Court of Appeals ruling in *Paxton v. City of Dallas*, which stated that all dates of birth covered under the Public

Information Act were confidential. Some contend that dates of birth are vitally important to monitor the actions of public officers, to ensure the accuracy of information, for news reporting, for identity verification in the context of elections, credit checks, loan decisions, and crime reporting, and for other purposes.

DIGEST:

CSHB 1655 would specify that the Texas Public Information Act would not authorize a governmental body to withhold a date of birth, except as permitted by Government Code sec. 552.102, federal privacy requirements under the Health Insurance Portability and Accountability Act, or constitutional or statutory law.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2019, and would apply only to a request for information received by a governmental body on or after the effective date.

SUBJECT: Allowing termination of a lease after a tenant's death without liability

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 6 ayes — Martinez Fischer, Darby, Beckley, Collier, Landgraf, Moody

0 nays

3 absent — Parker, Patterson, Shine

WITNESSES: For — (*Registered, but did not testify*: Jeannie Nelson, Austin Tenants Council; Melissa Shannon, Bexar County Commissioners Court; John Barton, Justices of the Peace and Constables Association of Texas; Julia Parenteau, Texas Realtors)

Against — None

On — David Mintz, Texas Apartment Association

BACKGROUND: Property Code sec. 92.014 governs the process by which a landlord may remove or allow the removal of a deceased tenant's personal property and requires the landlord to refund the tenant's security deposit, less lawful deductions, to a person lawfully entitled to the refund. If a landlord and tenant agree to a different procedure for removing, storing, or disposing of property in the case of the tenant's death, that agreement supersedes this section.

It has been noted that current law does not mandate policies that prevent a deceased tenant's surviving family from having to pay future rent or early termination fees for the remainder of the tenant's lease.

DIGEST: CSHB 69 would allow the estate of a deceased person to terminate the person's residential lease without incurring liability for future rent or other sums due for early termination under the lease.

In order to terminate the lease without liability:

- a representative of the deceased person's estate would need to provide written notice of the termination of the lease;
- the deceased person's property would have to be removed from the leased premises by a person lawfully entitled to the property or by the landlord, depending on the circumstances;
- the person lawfully entitled to the property would be required to sign an inventory of the removed property, if required by the landlord or landlord's agent.

The termination would be effective 30 days after the written notice was provided or on the date on which all the conditions of termination were met, whichever was later.

A landlord who received a lease termination notice from a representative of a deceased tenant's estate would be required to provide a copy of the written lease agreement to the person who provided the notice.

The bill would not affect the obligations or liability of the tenant's estate under the lease before the lease's termination, including liability for delinquent or unpaid rent or for damages to the property not caused by normal wear and tear.

A landlord or landlord's agent who lawfully permitted a representative of a deceased tenant's estate to enter the leased premises would not be liable for an act or omission arising from the entry.

The bill would take effect September 1, 2019, and would apply only to a lease agreement entered into on or after that date.

SUBJECT: Amending statute of repose of defective instrument affecting real property

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 9 ayes — Leach, Farrar, Y. Davis, Julie Johnson, Krause, Meyer, Neave, Smith, White

0 nays

WITNESSES: For — John Rothermel; (*Registered, but did not testify*: Meredyth Fowler, Independent Bankers Association of Texas; Randy Lee, Stewart Title Guaranty Company; Shea Place, Texas Land Title Association; John Fleming, Texas Mortgage Bankers Association)

Against — None

BACKGROUND: Civil Practice and Remedies Code sec. 16.033 requires an individual with a right of action for the recovery of real property conveyed by instruments with certain defects to bring suit no later than two years after the instrument was filed for record with the county clerk. An instrument with a ministerial defect, omission, or informality in the certificate of acknowledgement that has been filed for longer than two years is considered to be lawfully recorded and to be notice of the existence of the instrument on and after the date the instrument is filed.

Some have suggested that the current two-year statute of repose for a technical defect in an instrument conveying real property could be too long and that the law should be amended to reflect current trends toward immediate repose to reflect the increasing speed of real estate transactions.

DIGEST: CSHB 1176 would limit to six months the length of time a defective instrument affecting real property was required to be filed for record before the instrument was considered lawfully recorded and to be notice of the existence of the instrument on and after the date the instrument was filed. The bill also would remove the specification that a defect be a ministerial defect.

The bill would remove the following from being considered defects for the purposes of Civil Practice and Remedies Code sec. 16.033:

- acknowledgement of the instrument in an individual, rather than a representative or official, capacity; and
- failure of the record or instrument to show an acknowledgment or jurat that complied with applicable law.

The bill would take effect September 1, 2019, and would apply only to an instrument filed for record on or after that date.

SUBJECT: Providing student access to public school instructional materials

COMMITTEE: Public Education — favorable, without amendment

VOTE: 12 ayes — Huberty, Bernal, Allen, Allison, Ashby, K. Bell, Dutton, K. King, Meyer, Sanford, Talarico, VanDeaver

0 nays

1 absent — M. González

WITNESSES: For — (Registered, but did not testify: Betsy Singleton, League of Women Voters of Texas; Ted Raab, Texas American Federation of Teachers (Texas AFT); Paige Williams, Texas Classroom Teachers Association; Lisa Dawn-Fisher, Texas State Teachers Association)

Against — None

On — (*Registered, but did not testify*: Monica Martinez, Texas Education Agency)

BACKGROUND: Education Code 26.006(c) allows parents to request that the school district or open-enrollment charter school their student attends allow the student to take home any instructional materials used by the student.

Concerns have been raised regarding a lack of reliable access to technology for certain students that could prohibit them from being able to access certain instructional materials at home.

DIGEST: HB 391 would require a school district or open-enrollment charter school to provide instructional materials in printed book format to students who did not have reliable access to technology at home and whose parents made a request to allow the student to take home instructional materials.

A district or charter school would be required to document each denied parental request, including the reason the request was denied, and submit it to the Texas Education Agency (TEA) no later than 30 days after the

request was received. TEA would report annually to the Legislature the number of and reasons for the denials.

The bill would apply beginning with the 2019-2020 school year.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2019.

SUBJECT: Allowing Jacksonville police to enforce commercial vehicle standards

COMMITTEE: Transportation — favorable, without amendment

VOTE: 10 ayes — Canales, Landgraf, Y. Davis, Goldman, Krause, Leman, Martinez, Ortega, Raney, E. Thompson

0 nays

3 absent — Bernal, Hefner, Thierry

WITNESSES: For — Andrew Hawkes, City of Jacksonville; John Esparza, Texas Trucking Association

Against — None

On — Jeremy Nordloh, Texas Department of Public Safety

BACKGROUND: Transportation Code sec. 644.101 describes certain municipalities whose peace officers may be certified by the Department of Public Safety (DPS) to enforce commercial vehicle safety standards.

Some have noted that Jacksonville has increasingly heavy truck traffic but that its police officers are not authorized to enforce commercial motor vehicle safety standards.

DIGEST: HB 695 would add a municipality with a population between 14,000 and 17,000 that contained three or more numbered U.S. highways and was located in a county that was adjacent to a county with a population of more than 200,000 (Jacksonville) to the list of municipalities whose peace officers could apply for certification from the Department of Public Safety to enforce commercial vehicle safety standards.

To the extent of any conflict with another act of the 86th Legislature involving nonsubstantive additions and corrections, this bill would prevail.

The bill would take effect September 1, 2019.

SUBJECT: Adjusting vehicle storage fees based on the Consumer Price Index

COMMITTEE: Licensing and Administrative Procedures — committee substitute recommended

VOTE: 7 ayes — T. King, Goldman, Harless, Herrero, K. King, Kuempel, Paddie

0 nays

3 absent — Geren, Guillen, Hernandez

1 present not voting — S. Thompson

WITNESSES: For — Paul Martin, National Association of Mutual Insurance Companies; Tasha Mora, Southwest Tow Operators Association; Ken Ulmer, Texas Towing and Storage Association; (*Registered, but did not testify*: Scott Mosser, CT Towing; Lorie Court and Vincent Court, Excel Towing; Shonda Jordan, J&J Towing Inc.; Tessie Anderson, Tommy Anderson, James Bennett, Gary Hoffman, and Curtis Jordan, Southwest Tow Operators; Jeanette Rash, Texas Towing and Storage Association; Aimee Hoffman, James Lindgren, and Linda Lindgren, Tow King of Waco)

Against — None

On — (*Registered, but did not testify*: Brian Francis, Texas Department of Licensing and Regulation)

BACKGROUND: Occupations Code sec. 2303.155 allows operators of vehicle storage facilities and governmental vehicle storage facilities to charge certain fees to owners of vehicles stored or parked at their facilities.

Some have said that vehicle storage facility fees should be adjusted with inflation to help operators run an economically viable business.

DIGEST: CSHB 1140 would require the Texas Commission of Licensing and Regulation (TCLR) to adjust the impoundment and storage fees associated

with vehicle storage facilities and government vehicle storage facilities biennially.

On January 1 of even-numbered years, fees for impoundment and storage would be adjusted by an amount equal to the fees in effect on December 31 of the preceding year multiplied by the percentage increase or decrease in the consumer price index during the preceding state fiscal biennium. The consumer price index would mean the Consumer Price Index for All Urban Consumers (CPI-U) published by the Bureau of Labor Statistics of the U.S. Department of Labor. No later than November 1 of odd-numbered years, TCLR would be required to adjust the fees and publish them on the Texas Department of Licensing and Regulation website.

If the fee was decreased, operators would be required to begin charging the adjusted fee on the effective date of the decrease. If the fee was increased, operators could begin charging the adjusted fee at any time on or after the effective date of the increase.

The bill also would set a daily storage fee of $20, rather than between $5 and $20, for vehicles 25 feet or shorter and would remove a fee that could be charged by operators for the remediation, recovery, or capture of environmental or biological hazards.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2019.

SUBJECT: Permitting carryover pull-tab bingo to award prizes of up to $10,000

COMMITTEE: Licensing and Administrative Procedures — favorable, without amendment

VOTE: 8 ayes — T. King, Goldman, Harless, Herrero, K. King, Kuempel, Paddie, S. Thompson

0 nays

3 absent — Geren, Guillen, Hernandez

WITNESSES: For — Will Martin, American Legion (*Registered, but did not testify*: Steve Bresnen, Bingo Interest Group; Angela Hale, Conservative Texans for Charitable Bingo; Stephen Fenoglio, Texas Charity Advocates; Tom Stewart, Texas Charity Advocates; Kimberly Kiplin, Department of Texas, Veterans of Foreign Wars)

Against — None

On — Michael Farrell, Texas Lottery Commission

BACKGROUND: Occupations Code sec. 2001.002(24) defines pull-tab bingo, commonly known as instant bingo or break-open bingo, as a form of bingo played using paper tickets with perforated break-open tabs, the face of which is hidden to conceal numbers, letters, or symbols, some of which have been designated in advance as prize winners. Sec. 2001.420 defines limits on the value of bingo prizes.

DIGEST: HB 1186 would establish carryover pull-tab bingo in statute and limit the value of a jackpot prize awarded in a carryover pull-tab bingo game to $10,000.

The bill would define carryover pull-tab bingo as a form of pull-tab bingo played in successive event pull-tab bingo deals in which a portion of the bingo prize for each deal would be paid into a jackpot prize. The winner of each deal would have the opportunity to win the jackpot prize and play

would continue until the jackpot prize was awarded. The term would not include a game played on a gambling device.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2019.

SUBJECT: Allowing certain persons to consent to inpatient mental health services

COMMITTEE: Public Health — committee substitute recommended

VOTE: 10 ayes — S. Thompson, Wray, Allison, Coleman, Frank, Lucio, Ortega, Price, Sheffield, Zedler

0 nays

1 absent — Guerra

WITNESSES: For — Steve Bresnen and Gabriella Reed, El Paso County; Guy Herman, Statutory Probate Courts of Texas; (*Registered, but did not testify*: Chase Bearden, Coalition of Texans with Disabilities; Aaryce Hayes, Disability Rights Texas; Andrew Cates, Texas Nurses Association; Julie Gilberg)

Against — (*Registered, but did not testify*: Adam Cahn, Cahnman's Musings; Nicole Hudgens, Texas Values Action)

On — Mason Prewitt, Texas Home School Coalition; (*Registered, but did not testify*: Courtney Seals, Health and Human Services Commission)

BACKGROUND: Family Code ch. 32.001 allows certain non-parents of a child to consent to medical, dental, psychological, and surgical treatment for the child when the person who has the right to consent cannot be contacted or has not given notice to the contrary.

Ch. 35 authorizes individuals in sec. 32.001 to seek a court order for temporary authorization for care of a child by filing a petition in the district court in the county in which the individual resides.

DIGEST: CSHB 1318 would allow grandparents, adult siblings, uncles, and aunts of a child who had actual care, custody, and control of a child for the preceding six months to seek a court order for temporary authorization to consent to voluntary inpatient mental health services for a child.

Petition. Under the bill, these individuals could seek the court order by

filing a petition in the district court in the county in which the individual resided. The petition for a child would have to:

- be styled "ex parte" and be in the name of the child;
- be verified by the petitioner;
- state the name, date of birth, and current physical address of the child and the petitioner, and, if known, the current physical and mailing addresses of the child's parents, conservators, or guardians;
- describe any court proceeding involving the child;
- describe the petitioner's relationship to the child and the dates in the past six months that the child had resided with the petitioner;
- contain a certificate of medical examination for mental illness prepared by a psychiatrist; and
- state any reason that the petitioner was unable to obtain signed, written documentation from a parent, conservator, or guardian of the child.

These authorized individuals also could petition to admit a person who was at least 16 years old to an inpatient mental health facility. If the Department of Family and Protective Services was the guardian or managing conservator of a person younger than 18 years, the department could request the minor's admission to an inpatient mental health facility if a psychiatrist stated detailed reasons for that opinion under oath.

Hearing. On receipt of the petition, the court would have to set a hearing and provide a copy of the petition and notice to the parent, conservator, or guardian of the child.

At the hearing, the bill would allow the court to hear evidence regarding the child's need for inpatient mental health services by the petitioner and any objection or other testimony from the child's parent, conservator, or guardian. The bill would require the court to dismiss the petition if the child's parent, conservator, or guardian made an objection.

Court order. Under the bill, the court would have to grant the petition for temporary authorization if the court found:

- by a preponderance of the evidence that the child did not have available a parent, conservator, guardian, or other legal representative to give consent for voluntary inpatient mental health services; and
- by clear and convincing evidence that the child was a person with mental illness or who demonstrated symptoms of a serious emotional disorder and who presented a risk of serious harm to themselves or others if not immediately restrained or hospitalized.

The bill would require a copy of an order granting temporary authorization to be:

- filed under the cause number in any court that had rendered a conservatorship or guardian order regarding a child; and
- sent to the last known address of the child's parent, conservator, or guardian.

The order granting temporary authorization would expire on the earliest of:

- the date the petitioner requested that the child be discharged from the inpatient mental health facility;
- the date a physician determined that the court's findings no longer applied to the child; or
- the 10th day after the date the order for temporary authorization was issued.

Other provisions. The bill would allow a peace officer, without a warrant, to take a person into custody, regardless of the age of the person, if the officer believed the person had a mental illness; believed the person posed a substantial risk of serious harm unless immediately restrained; and believed there was not sufficient time to obtain a warrant before taking the person into custody.

The bill would take effect September 1, 2019.

SUBJECT: Prohibiting certain covenants in architectural and engineering contracts

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 9 ayes — Leach, Farrar, Y. Davis, Julie Johnson, Krause, Meyer, Neave, Smith, White

0 nays

WITNESSES: For — Charlie Geer, American Council of Engineering Companies of Texas; (*Registered, but did not testify*: Peyton McKnight, American Council of Engineering Companies of Texas; David Lancaster, Texas Society of Architects; Jennifer McEwan, Texas Society of Professional Engineers)

Against — (*Registered, but did not testify*: Clifford Sparks, City of Dallas; Keith Strama, ExxonMobil; Michael Garcia, Texas Association of Manufacturers; Sam Gammage, Texas Chemical Council; George Christian, Texas Civil Justice League; Shana Joyce, Texas Oil and Gas Association; Jay Brown, Valero)

DIGEST: CSHB 1211 would impose restrictions on the covenants that could be included in a contract for engineering or architectural services related to the improvement of real property.

Any covenant in connection with such a contract that required a licensed engineer or registered architect to defend any party would be void and unenforceable. A covenant could provide for the reimbursement of an owner's reasonable attorney's fees in proportion to the engineer's or architect's liability.

Contracts would be prohibited from requiring a licensed engineer or registered architect to perform professional services to a level of professional care beyond that of an ordinarily prudent architect or engineer in the same or similar circumstances.

An owner that was a party to contract that was not a design-build contract

could require that the owner be named as an additional insured under the engineer's or architect's commercial general liability insurance policy and be provided with any defense available to a named insured under the policy.

The bill would take effect September 1, 2019, and would apply to any covenant or contract entered into on or after this date.

SUPPORTERS SAY:

CSHB 1211 would protect design professionals from uninsurable risk by prohibiting duty-to-defend provisions in design contracts and limiting the standard of care that could be required of design professionals only to that of a reasonably prudent design professional in the same or similar circumstances.

Many architectural and engineering contracts contain duty-to-defend provisions that require the design professional to defend against a third-party claim of the owner's alleged liability. These provisions might be triggered even if the design professional was not at fault and the claim was based solely on the owner's negligence. Defending such claims gives rise to significant costs that often are not covered by professional liability insurance policies.

CSHB 1211 would prevent this abuse from happening by rendering duty-to-defend provisions void and unenforceable. Such provisions already are prohibited in governmental contracts, so the bill merely would extend this treatment to nongovernmental contracts. Contracts also would be prohibited from requiring design professionals to provide services at an uninsurable and unreasonable standard that exceeded that of an ordinarily prudent and similarly-situated design professional.

The bill would preserve the rights of parties to negotiate the terms of design contracts while balancing the bargaining positions so that design professionals would not have to assume all of the risk in order to work in Texas.

OPPONENTS SAY:

CSHB 1211 would apply a one-size-fits-all approach to contracts with architects and engineers, which could negatively impact owners in complex projects.

The bill would undermine owners' ability to maintain a coordinated defense in litigation involving construction and design defects in complex projects by depriving companies of the right to include a duty-to-defend provision in contracts with architects and engineers. Such provisions are essential to making sure that all of the parties to the contract for a complex project are on the same page in the event of such litigation.

While duty-to-defend provisions may be unfair in contracts involving smaller architectural or engineering firms that have less bargaining power, more complex projects usually involve bigger firms that are more than capable of negotiating for themselves.

SUBJECT: Extending the registration period for certain trailers

COMMITTEE: Transportation — favorable, without amendment

VOTE: 9 ayes — Canales, Landgraf, Bernal, Y. Davis, Hefner, Krause, Leman, Martinez, Ortega

0 nays

4 absent — Goldman, Raney, Thierry, E. Thompson

WITNESSES: For — Randy Pomikahl; (*Registered, but did not testify*: Peyton Schumann, Texas and Southwestern Cattle Raisers Association)

Against — None

On — (*Registered, but did not testify*: Jeremiah Kuntz, Texas Department of Motor Vehicles)

DIGEST: HB 1262 would require the Department of Motor Vehicles to develop a system of registration to allow the owner of a trailer, semitrailer or pole trailer with a gross weight of 7,500 pounds or less to register the vehicle for up to five years. A trailer owner could select the number of years for registration and would pay the cumulative fees for the entire registration period at the time of registration.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2019.

SUBJECT: Creating a motor fuel tax exemption for rural transit districts

COMMITTEE: Ways and Means — favorable, without amendment

VOTE: 8 ayes — Burrows, Guillen, Bohac, Murphy, Noble, E. Rodriguez, Shaheen, Wray

0 nays

3 absent — Cole, Martinez Fischer, Sanford

WITNESSES: For — Jeff Heckler, Spartan Transit; Robert Turner, Texas Poultry Federation; (*Registered, but did not testify*: Jim Allison, County Judges and Commissioners Association of Texas; Roger Harmon, Johnson County; Wade Long, Texas Transit Association; Deece Eckstein, Travis County Commissioners Court)

Against — None

DIGEST: HB 916 would exempt from motor fuel tax gasoline, diesel, compressed natural gas, and liquefied natural gas sold to a rural transit district for use exclusively in providing public transportation.

A rural transit district could be refunded any taxes that it paid for such motor fuels. To do so, a refund claim would have to be filed with the comptroller with information on vehicle mileage, hours of service provided, and fuel consumed. A rural transit district requesting a refund would have to maintain all supporting documentation relating to the refund for six years after the date of the request.

A license holder could claim a credit for any taxes paid on the purchase of gasoline and diesel fuel that was resold tax-free to a rural transit district that used the gasoline or diesel fuel exclusively to provide public transportation.

Transit companies other than a rural transit district that qualified for a refund of taxes under this bill also could seek a refund with the

comptroller in an amount equal to one cent per gallon for gasoline used in transit vehicles.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2019. It would apply to tax liability accruing on or after the effective date.

NOTES: According to the Legislative Budget Board, the bill would have an estimated negative impact of $87,000 on general revenue related funds through fiscal 2020-21.

SUBJECT: Providing pre-suit inspection and correction in certain construction suits

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 7 ayes — Leach, Farrar, Krause, Meyer, Neave, Smith, White

2 nays — Y. Davis, Julie Johnson

WITNESSES: For — Jay Farwell, Albert Gutierrez, and Doug McMurry, Association of General Contractors, San Antonio; Corbin Van Arsdale, Association of General Contractors, Texas Building Branch; Jerry Hoog, Bartlett Cocke General Contractors; Darrell Pearson, PBK Architects; Tom Kader, Sedalco Inc.; Jennifer Fagan, Texas Construction Association; Luis Figueroa and Daniel Hart, Texas Society of Architects; Stephanie Cook; (*Registered, but did not testify*: Peyton McKnight, American Council of Engineering Companies of Texas; Joe Woods, American Property and Casualty Insurance Association; Travis Jones and Rodney Ruebsahm, Armko Industries, Inc.; Jon Fisher, Associated Builders and Contractors of Texas; Phil Thoden, Associated General Contractors of America, Austin Chapter; Brian Cook, William Martinez, and Jerry Nevlud, Associated General Contractors of America, Houston Chapter; Wendy Lambert, Central Texas Subcontractor Association; Brad Winans, Hensel Phelps; Burton Hackney, Joeris General Contractors, Ltd.; Mary Tipps, Texans for Lawsuit Reform; Liz Lonngren, Texas Architects; Angie Cervantes, Texas Masonry Council; Becky Walker, Texas Society of Architects; Jennifer McEwan, Texas Society of Professional Engineers; Wade Long, Texas Surety Federation; Perry Fowler, Texas Water Infrastructure Network; Jack Baxley, TEXO The Construction Association; Ryan Therrell, The Beck Group; Jose Villarreal, Vaughn Construction; Tara Snowden, Zachry Corporation; David Deschaine; Jeff Eubank; Will Hodges; Timothy Rosenberg)

Against — Thomas Koger, Jubilee Academies; William Clay Montgomery, Spearman Independent School District; Barry Haenisch, Texas Association of Community Schools; Will Adams, Texas Trial Lawyers Association; Winifred "Winnie" Dominguez, Walsh, Gallegos, Trevino, Russo and Pyle PC, Texas Association of School Boards; Craig

Eiland; (*Registered, but did not testify*: Brie Franco, City of Austin; Sally Bakko, City of Galveston; Jamaal Smith, City of Houston; Jon Weist, City of Irving; James McCarley, City of Plano; Christine Wright, City of San Antonio; Ricardo Ramirez, City of Sugar Land; Jim Allison, County Judges and Commissioners Association of Texas; Michael Fiebig, Fiebig Architecture, PLLC; Donna Warndof, Harris County Commissioners Court; Bill Kelly, City of Houston Mayor's Office; Blaire Parker, San Antonio Water System; Ruben Longoria, Texas Association of School Boards; John Dahill, Texas Conference of Urban Counties; Jerod Patterson, Texas Rural Education Association; John Grey, Texas School Alliance; Alexis Tatum, Travis County Commissioners Court; Julie Gilberg)

DIGEST:

CSHB 1999 would require governmental entities, before filing suit in connection with an alleged construction defect, to submit a report to potential opposing parties and provide these parties with an opportunity to inspect and correct.

Applicability. The bill would apply to a governmental entity's claim against a contractor, subcontractor, supplier, or design professional for damages caused by an alleged construction defect in a public building or public work or for indemnity or contribution for such damages.

The bill would not apply to:

- a claim for personal injury, survival, or wrongful death;
- a claim involving the construction of residential property covered under the residential construction liability provisions of the Property Code;
- a contract entered into by the Texas Department of Transportation;
- a project that received money from a state or federal highway fund; or
- certain civil works projects.

Report, inspection, and correction. Before bringing an action asserting a claim described above, a governmental entity would be required to provide a written report to each party with whom the entity had a contract

for the design or construction of an affected structure.

The report would identify the specific construction defect on which the claim was based, describe the present physical condition of the affected structure, and describe any modification, maintenance, or repairs to the affected structure made by the governmental entity or others since the affected structure's initial use or occupation.

Each party would be allowed a reasonable opportunity to inspect any construction defect or related condition identified in the report for a period of 30 days after the report was sent. The parties would have 120 days after the inspection either to correct any construction defect or related condition identified in the report or to enter into a separate agreement with the governmental entity to make such correction.

Tolling. If the report and opportunity to correct were provided during the final year of the limitations period for the claim, the period would be tolled until one year after the date on which the report was provided.

Dismissal. A court, arbitrator, or other adjudicating authority would be required to dismiss without prejudice an action asserting a claim described above if the governmental entity had not submitted a report or provided an opportunity for inspection and correction as required by this bill. If after an action was dismissed without prejudice, a second action was brought and the governmental entity still had not complied with these requirements, then the action would be dismissed with prejudice.

Inspection costs. A governmental entity would be entitled to recover reasonable costs to obtain the report required by this bill if the governmental entity recovered damages for a construction defect identified by the report.

Emergency repairs. A governmental entity would not be prohibited or limited from making emergency repairs to property as needed to protect the health, safety, and welfare of the public or a building occupant.

Insurance. If a party provided a written notice of an alleged construction defect or report to the party's insurer, the insurer would be required to treat

the notice or report to the party as the filing of a suit asserting that claim against the party for purposes of the relevant policy terms.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2019, and would apply only to any action that accrued on or after the effective date and to any insurance policy delivered, issued for delivery, or renewed on or after January 1, 2020.

SUPPORTERS SAY:

CSHB 1999 would promote fairness and reduce costs in governmental construction projects by giving contractors a chance to inspect and correct alleged defects prior to being sued.

Governmental entities increasingly are suing contractors for alleged construction defects without first notifying them of or offering them a chance to fix such defects. Because reputation is key to attracting new business, many contractors would be willing to repair any defects even without a lawsuit, which renders much of this litigation unnecessary.

These lawsuits can go on for years, harming both contractors and governmental entities. Insurance carriers have been increasing the cost of insurance for contractors that work for governmental entities due to this surge in litigation. This has led contractors to put in fewer bids for public works projects, undermining the competitive bidding process and increasing the cost of such projects.

CSHB 1999 also would result in defects in public works being repaired more quickly, which ultimately would benefit the public.

The bill would not prevent governmental entities from suing contractors. Instead, it would provide contractors with a fair and reasonable opportunity to correct any defects prior to being sued.

OPPONENTS SAY:

CSHB 1999 would create an additional obstacle for governmental entities seeking to be compensated for damages caused by construction defects. The time and costs of preparing a report and providing an opportunity for inspection and correction could prevent these entities from raising these claims and recovering damages. This could result in an increase in the cost

of public works projects.

The bill also would require governmental entities to provide an opportunity for correction to contractors who may have been dishonest or incompetent, which could result in even more damage to the property.

Contractors already can negotiate with governmental entities for a right to cure. As such, the bill is unnecessary and would deprive the parties of their right to negotiate all of terms of their contract.

SUBJECT: Expanding Medicaid fraud offense to include other health care programs

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 8 ayes — Collier, Zedler, K. Bell, J. González, P. King, Moody, Murr, Pacheco

0 nays

1 absent — Hunter

WITNESSES: For — (*Registered, but did not testify*: Vincent Giardino, Tarrant County Criminal District Attorney's Office; Elise Richardson, Texas Ambulance Association)

Against — None

On — Carolyn Denero, Office of Attorney General; (*Registered, but did not testify*: Brian Johnson, Texas Office of the Attorney General)

BACKGROUND: Penal Code sec. 35A establishes the crime of Medicaid fraud, which involves false statements or misrepresenting facts to receive a benefit under the Medicaid program and other actions relating to the program.

Some have suggested that the statute is too narrow and should apply to fraud committed against other state or federal health care programs.

DIGEST: HB 2894 would revise the offense of Medicaid fraud to include actions involving other health care programs in addition to Medicaid. The offense would be renamed health care fraud.

The bill would revise many of the definitions relating to the offense, generally to broaden them to apply to health care programs rather than only to Medicaid. The bill would add provisions defining a health care program as a program funded by the state, the federal government, or both and designed to provide health care services to recipients, including a program administered in whole or in part through a managed care delivery

model.

The bill would take effect September 1, 2019, and would apply to offenses committed on or after that date.

SUBJECT: Creating a broadband office and a broadband service investment program

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 11 ayes — Phelan, Deshotel, Guerra, Harless, Holland, Hunter, P. King, Parker, Raymond, E. Rodriguez, Springer

0 nays

2 absent — Hernandez, Smithee

WITNESSES: For — Kenny Scudder, AARP; (*Registered, but did not testify*: Kara Mayfield, Association of Rural Communities in Texas; Marisa Finley, Baylor Scott and White Health; Andrew Wise, Microsoft; Jeremy Fuchs, Texas and Southwestern Cattle Raisers Association; Jennifer Bergland, Texas Computer Education Association; Evan Autry, Texas Electric Cooperatives; Michael Pacheco, Texas Farm Bureau; Patrick Wade, Texas Grain Sorghum Association; Sara Gonzalez, Texas Hospital Association; Dan Finch, Texas Medical Association; Monty Wynn, Texas Municipal League; Ryan Skrobarczyk, Texas Nursery & Landscape Association; Daniel Gonzalez, Texas Realtors; Bay Scoggin, Texas Public Interest Research Group)

Against — Bob Digneo, AT&T Texas; Richard Lawson, Verizon; (*Registered, but did not testify*: Jason Winborn, AT&T; James Hines, Texas Association of Business; Deborah Giles, Texas Technology Consortium and Center for Technology)

On — Francisco Enriquez and Thomas Visco, Glasshouse Policy; Walt Baum, Texas Cable Association; (*Registered, but did not testify*: JP Urban, Public Utility Commission of Texas)

BACKGROUND: Interested parties have raised concerns that a lack of access to broadband service is leaving rural Texas behind with regard to access to education, healthcare services, and economic development opportunities.

DIGEST: CSHB 2423 would establish a broadband office in the Public Utility

Commission of Texas (PUC), require that office to establish a broadband grant program, and create a broadband investment account in the general revenue fund for the purposes of the grant program. The bill would apply only to broadband service provided by a private-sector provider.

Broadband investment account. CSHB 2423 would create the broadband investment account in the general revenue fund. The account would consist of legislative appropriations, gifts, grants, federal grants, donations, and earned interest. Money in the account could be appropriated only to the broadband office for the purposes of the grant program.

Broadband office. The bill would require the broadband office to:

- facilitate and coordinate the efforts of state agencies, hospitals, schools, and local units of government, including regional planning commissions, in connection with broadband projects;
- develop proposals for broadband investment and deployment strategies for unserved areas in rural communities and other areas;
- promote and coordinate public- and private-sector broadband service solutions in support of development goals;
- assist and promote local and regional broadband planning;
- pursue and obtain federal sources of funding;
- develop a framework to measure broadband access and designate unserved areas;
- develop statewide goals for broadband service deployment in unserved areas;
- manage and award funds allocated to the office for projects; and
- serve as an information clearinghouse for federal programs that provide broadband assistance to local entities.

PUC could employ any additional employees necessary to complete these duties.

The bill would not authorize PUC to regulate broadband services or service providers; require service providers to submit information to the commission; or require or authorize the commission to require a service

provider to participate in any service planning, activities, or initiatives.

Broadband grant program. CSHB 2423 would require the broadband office to establish a program to provide grants to applicants for the expansion of access to broadband services in unserved areas. The office would divide the state into at least five regions, and it would award grants as equitably across those regions as possible. When practical, the office would prioritize applications for projects for unserved areas in counties with a population of less than 10,000.

The broadband office would be required to establish and publish criteria for grant recipients. Grants could not exceed $250,000 and could not fund more than 30 percent of the total cost of the project.

Grant applications. Eligible applicants would include a for-profit or non-profit organization, including a cooperative, a telecommunications provider, or a facilities-based broadband service or wireless provider.

Applications would be required to have certain information outlined by the bill, including a description of the proposed project territory and the number of homes, farms, schools, public facilities, hospitals, and businesses that would be served by the project. Applicants would be required to provide notice of the application to all political subdivisions, hospitals, and other service providers in the proposed area prior to submission. The office could not deny an application solely because the project had additional sources of funding, nor could it favor a particular technology in awarding grants. Any information not included in the application could not be considered in awarding the grant.

The office could require applicants to consolidate multiple projects that were in a single census block. Grants would be awarded on a competitive basis and would be subject to considerations outlined in the bill, including the potential economic effects of the project and whether the project would delay the provision of broadband in neighboring areas. The office would not be required to approve any applications.

The office would be required to post information regarding the application process and allow for a 30-day comment period on each application. Any

protests would be provided to the applicant, who would be required to provide additional information upon request. If the office intended to deny any part of the application, the office would be required to provide the applicant seven days notice to amend the proposal. If the office intended to grant the application, it would be required to notify the protestor no later than 15 days prior to approval.

Program standards. PUC would be required to consider federal standards used by similar, nationwide programs, for minimum broadband service provided by a grant recipient. The standards would have to include requirements that the grant recipient provided broadband at rates reasonably comparable to rates for similar services in urban areas. The recipient could not use caps on data usage in the project's territory. Grants could be provided in conditional installments to ensure the recipient complied with program requirements.

Written agreement with grant recipients. CSHB 2423 would require the broadband office to enter into a written agreement with an entity that was to be awarded a grant. The agreement would be required to specify that, if PUC found the recipient to have not complied with minimum service standards or any of the applicable rules, the recipient would be required to repay the grant. If the recipient had not used the grant money for its intended purpose by a date provided in the agreement, the recipient would have to repay the grant.

Reporting requirements. When a project was completed, the recipient would be required to notify the broadband office and to provide annual reports to the office for three years following project completion to inform the office of the recipient's compliance with program standards. The office could request information from a recipient to verify the reports and would have to make that information publicly available.

By December 1 of each even-numbered year, the broadband office would be required to provide a report to the Legislature that included the amount of money granted through the program, the amount of money approved but not yet distributed, the name of each grantee with a location and description of the project, a progress report of ongoing projects, and a report of all projects that were completed during the reporting period.

The bill would take effect September 1, 2019.

NOTES: According to the Legislative Budget Board, the bill would have a negative impact of about $1.2 million to general revenue related funds through fiscal 2020-21.

SUBJECT: Reducing additional tax imposed on certain land after change of use

COMMITTEE: Ways and Means — favorable, without amendment

VOTE: 8 ayes — Burrows, Guillen, Bohac, Murphy, Noble, E. Rodriguez, Shaheen, Wray

0 nays

3 absent — Cole, Martinez Fischer, Sanford

WITNESSES: For — (*Registered, but did not testify*: Julia Rathgeber, Association of Electric Companies of Texas; Frank Murphy, Dallas Builders Association; Don Allen, Greater Fort Worth Builders Association; David Glenn, Home Builders Association of Greater Austin; Michael Jewell, Solar Energy Industries Association; Jeremy Fuchs, Texas and Southwestern Cattle Raisers Association; Scott Norman, Texas Association of Builders; Ray Head, Texas Association of Property Tax Professionals; Michael Pacheco, Texas Farm Bureau; Vance Ginn, Texas Public Policy Foundation; Daniel Gonzalez and Julia Parenteau, Texas Realtors; John Pitts Jr, Texas Solar Power Association)

Against — (*Registered, but did not testify*: Alexis Tatum, Travis County Commissioners Court)

BACKGROUND: Tax Code ch. 23, subchs. D and E govern the appraisal of qualified agricultural use and timber use land, respectively, which cannot exceed the market value determined by other appraisal methods.

Under sec. 23.55, if the use of land appraised as agricultural land changes, an additional tax is imposed on the land equal to the difference between the original tax imposed and the tax that would have been imposed on the basis of market value for the five years preceding the change in use, plus interest at an annual rate of 7 percent. Sec. 23.76 imposes the same additional tax and interest on land appraised as timber land, if the land use changes.

Some have suggested that the additional tax and interest imposed on

agricultural or timber land when a change in use occurs is excessive.

DIGEST:

HB 1743 would reduce the additional tax and interest imposed on agricultural or timber land after a change of use had occurred to the difference in taxes for the preceding three years, plus interest at an annual rate of 5 percent.

The bill would take effect September 1, 2019, and apply only to a change of use of agricultural or timber land that occurred on or after that date.

NOTES:

According to the Legislative Budget Board, the bill would have an estimated negative impact of $3.7 million to general revenue related funds for fiscal 2020-21.

SUBJECT: Allowing HHSC to contract with TNCs for medical transport programs

COMMITTEE: Human Services — committee substitute recommended

VOTE: 8 ayes — Frank, Hinojosa, Clardy, Deshotel, Klick, Meza, Miller, Noble

0 nays

1 absent — Rose

WITNESSES: For — Marina Hench, American Cancer Society Cancer Action Network; Chase Bearden, Coalition of Texans with Disabilities; Jill Ann Jarrell, Doctors for Change; Lindsay Lanagan, Legacy Community Health; Jay Brown, Lyft; Chris Miller, Uber Technologies; Jamie Whitney, Zaffirini Law; Karla Quigley; Nicole Schroeder (*Registered, but did not testify*: Jason Neerman, Aetna; Jo DePrang, Children's Defense Fund-Texas; Jeff Miller, Disability Rights Texas; Aaron Gregg, Fresenius Medical Care; Alissa Sughrue and Greg Hansch, National Alliance on Mental Illness-Texas; Eric Kunish, National Alliance on Mental Illness-Austin Affiliate; J.T. Edwards, Southeast Vocational Alliance; David Edmonson, TechNet; Marshall Kenderdine, Texas Academy of Family Physicians; Michelle Romero, Texas Medical Association; Clayton Travis, Texas Pediatric Society; Pamela McPeters, TexProtects, Prevent Child Abuse America-Texas Chapter; Kyle Piccola, The Arc of Texas; Alexis Tatum, Travis County Commissioners Court; Rebecca Cowle; Jordan Weinert)

Against — None

On — Elizabeth Bruchez, Association for Community Transit, Brazos Transit District; Stephanie Muth, Health and Human Services Commission; Steven Feist, Logisticare; Brett Coghlan, Texas Ambulance Association; Butch Oberhoff, Texas EMS Alliance

BACKGROUND: Government Code sec. 531.0057 requires the Health and Human Services Commission (HHSC) to provide medical transportation services for clients of eligible health and human services programs. HHSC is allowed to contract with any public or private transportation provider or with any

regional transportation broker for the provision of public transportation services. Texas Administrative Code sec. 380.205(1) requires program clients to request routine medical transportation at least two working days in advance of an appointment.

Sec. 531.02414 defines the "medical transportation program" as the program that provides nonemergency transportation services to and from covered health care services, based on medical necessity, to recipients under Medicaid, the children with special health care needs program, and the transportation for indigent cancer patients program, who have no other means of transportation. A "regional contracted broker" is defined as an entity that contracts with HHSC to provide or arrange for the provision of nonemergency transportation services under the medical transportation program.

Sec. 533.00257(b) requires HHSC to provide medical transportation services on a regional basis through a managed transportation delivery model using managed transportation organizations and providers that operate under certain conditions and assume full financial risk.

Sec. 533.00257(a)(1) defines a "managed transportation organization" as a rural or urban transit district, a public transportation provider, a regional contracted broker, or a local private transportation provider approved by HHSC to provide Medicaid medical transportation services, or any other entity HHSC determined met certain requirements.

Occupations Code sec. 2402.001(5) defines "transportation network companies" as certain entities that, for compensation, enable a passenger to prearrange with a driver for a ride exclusively through the entities' digital networks.

Interested parties have suggested that transportation network companies could provide a more reliable and efficient means of nonemergency medical transportation for recipients of Medicaid and other health and human services programs.

DIGEST:

CSHB 1576 would allow the Health and Human Services Commission (HHSC), Medicaid managed care organizations, other managed care

organizations, and certain transportation organizations to contract or subcontract with transportation network companies (TNCs) and transportation vendors for the delivery of nonemergency medical transportation services and nonmedical transportation services under Medicaid.

Nonemergency transportation service. CSHB 1576 would allow a regional contracted broker to subcontract with a TNC to provide nonemergency transportation services, defined as a service to transport a person to or from a medically necessary service covered under a health care program in which the person was enrolled. HHSC rules governing these services would not apply to the TNC or its drivers. HHSC or the regional contracted broker could not require a TNC or TNC driver to enroll as a Medicaid provider, but could require TNCs and their drivers to be periodically screened against the list of excluded individuals and entities maintained by the Office of Inspector General of the U.S. Department of Health and Human Services.

A TNC driver who satisfied statutory driver requirements would be authorized to provide nonemergency medical transportation services, and a regional contracted broker and HHSC could not impose any additional requirements on the driver. A nonemergency transportation service driver could use a wheelchair-accessible vehicle if the vehicle otherwise met statutory requirements for TNCs.

CSHB 1576 would prohibit emergency medical services personnel and vehicles from providing nonemergency transportation services under the medical transportation program.

Nonmedical transportation service under Medicaid. The executive commissioner of HHSC would be required to adopt rules regarding the manner in which nonmedical transportation services, defined as transportation to and from a medically necessary health care service in a standard passenger vehicle, could be arranged and provided.

The rules would have to require a managed care organization to create a process to:

- verify that a passenger was eligible to receive nonmedical transportation services;
- ensure that nonmedical transportation services were provided only to and from covered health care services in areas where a TNC operated;
- refer a Medicaid recipient enrolled in a plan offered by the managed care organization to the medical transportation program if the managed care organization was not responsible for providing transportation services or the recipient required an accessible or specialized vehicle that was not available through a transportation vendor; and
- ensure the timely delivery of nonmedical transportation services to a Medicaid recipient, including setting reasonable service response goals.

A rule adopted to ensure timely delivery could not penalize a managed care organization that contracted with a transportation vendor if the vendor was unable to provide nonmedical transportation services to a Medicaid recipient after the managed care organization had made a specific request for those services.

Before permitting a driver, vendors would have to be required by rule to:

- confirm that the driver was at least 18 years old, had a valid driver's license, and had proof of registration and automobile financial responsibility for each vehicle used to provide nonmedical transportation;
- conduct a criminal background check for the operator that included the use of a commercial nationwide database and the national sex offender public website maintained by the U.S. Department of Justice;
- confirm that any vehicle to be used for nonmedical transportation services met statutory requirements and had at least four doors, unless it was a wheelchair-accessible vehicle; and
- obtain and review the driver's driving record.

The rules could not permit a driver to provide nonmedical transportation

services if the driver had been convicted of certain offenses in the past three years.

HHSC could not require a driver to enroll as a Medicaid provider to provide nonmedical transportation services or require a managed care organization to credential drivers.

HHSC or a managed care organization could require a transportation vendor or driver to be periodically screened against the list of excluded individuals and entities maintained by the Office of Inspector General of the U.S. Department of Health and Human Services.

A TNC driver who satisfied statutory driver requirements for TNCs would be authorized to provide nonmedical transportation services, and HHSC and managed care organizations could not impose any additional requirements on the driver. A driver could use a wheelchair-accessible vehicle if the vehicle otherwise met statutory requirements for TNCs.

Managed care organizations and nonmedical transportation services. Managed care organizations that contracted with HHSC would be required to arrange for the provision of nonmedical transportation services, and would be allowed to contract with a transportation vendor or other third party to do so. If a managed care organization contracted with a third party that was not a transportation vendor, the third party would be required to contract with a transportation vendor to deliver nonmedical transportation services.

If a managed care organization contracted with a third party or transportation vendor, the organization would have to ensure the effective sharing and integration of service coordination, service authorization, and utilization of management data between the managed care organization and the transportation vendor or third party.

A managed care organization could not require a driver to enroll as a Medicaid provider to provide nonmedical transportation services or to be credentialed to provide those services. A driver would be allowed to use a wheelchair-accessible vehicle if the vehicle otherwise met statutory requirements for TNCs.

Managed transportation organizations. Managed transportation organizations would be allowed to subcontract with a TNC. Any rule or requirement for managed transportation organizations would not apply to the subcontracted TNC or TNC driver. HHSC or the managed transportation organization could not require a TNC driver to enroll as a Medicaid provider.

HHSC or a managed transportation organization subcontracting with a TNC could require the TNC or driver to be periodically screened against the list of excluded individuals and entities maintained by the Office of Inspector General of the U.S. Department of Health and Human Services.

A TNC driver who satisfied statutory driver requirements would be authorized to subcontract for a managed transportation organization. HHSC and managed transportation organizations could not impose any additional requirements on the driver. A driver would be allowed to use a wheelchair-accessible vehicle if the vehicle otherwise met statutory requirements for TNCs.

Rulemaking and federal authorization. The executive commissioner of HHSC would be required to adopt rules as necessary to implement the bill as soon as practicable after the effective date.

If a state agency determined that a waiver or authorization from a federal agency was necessary for implementation of any provision of the bill, the state agency would be required to request the waiver and would be allowed to delay implementation of the provision until the waiver or authorization was granted.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2019.

SUBJECT: Prohibiting the use of certain weapons in certain river or stream beds

COMMITTEE: Culture, Recreation and Tourism — favorable, without amendment

VOTE: 7 ayes — Cyrier, Martinez, Bucy, Gervin-Hawkins, Holland, Kacal, Morrison

2 absent — Jarvis Johnson, Toth

WITNESSES: For — Philip Hancock; Bryan Hollaway; (*Registered, but did not testify*: Quint Balkcom, Game Warden Peace Officer's Association; Jodie Rapp, Texas Alliance of Land Brokers; Bob Turner, Texas Poultry Federation)

Against — None

On — (*Registered, but did not testify*: Mark Neugebauer, Texas General Land Office; Stormy King, Texas Parks and Wildlife Department)

BACKGROUND: Parks and Wildlife Code sec. 284.001 prohibits a person from discharging a firearm or shooting an arrow from any kind of bow if the person is located in or on the bed or bank of a navigable river or stream located in Dimmit, Edwards, Frio, Kenedy, Llano, Maverick, Real, Uvalde, or Zavala counties.

Concerns have been raised about hunting activities and firearm target practice taking place on river banks in Hall County.

DIGEST: HB 489 would prohibit a person from discharging a firearm or shooting an arrow if the person was located in or on the bed or bank of a navigable river or stream in Hall County.

The bill would take effect September 1, 2019.

SUBJECT: Amending certain TxDOT design-build contract requirements

COMMITTEE: Transportation — favorable, without amendment

VOTE: 10 ayes — Canales, Landgraf, Bernal, Y. Davis, Hefner, Krause, Leman, Martinez, Ortega, E. Thompson

0 nays

3 absent — Goldman, Raney, Thierry

WITNESSES: For — (*Registered, but did not testify*: Karen Rove, AGC of Texas, Highway Heavy; Matthew Geske, Austin Chamber of Commerce; J. McCartt, Fluor; Ray Sullivan, HNTB; James Hines, Texas Association of Business)

Against —Terri Hall, Texas TURF, Texans for Toll-free Highways; Don Dixon; (*Registered, but did not testify*: Angela Smith, Fredericksburg Tea Party; Michael Belsick; Kelli Cook; Matt Long; Ken Olson)

On — James Bass, Texas Department of Transportation

BACKGROUND: Transportation Code sec. 223.242 allows the Texas Department of Transportation (TxDOT) to use the design-build method for the design, construction, expansion, capital maintenance, or repair of a highway project. TxDOT may not enter into more than three design-build contracts in a fiscal year.

Sec. 223.245 requires TxDOT to prepare and issue a request for qualifications for any highway project that will be delivered through design-build. A request for qualifications also must be sent to short-listed project proposers and must include certain information, including a schematic design that is about 30 percent complete.

Some have suggested giving TxDOT more flexibility in scheduling contracts for projects delivered through design-build, an alternative method that allows design and construction to develop simultaneously,

since design-build projects may take more than one year to develop.

DIGEST:

HB 2830 would allow the Texas Department of Transportation to enter into six design-build contracts in a fiscal biennium, rather than three in a fiscal year.

The bill would specify that a design submitted in a request for qualifications under Transportation Code sec. 223.245 would not have to be a schematic design.

The bill would take effect September 1, 2019, and apply only to a highway project for which a request for qualifications was issued on or after that date.

SUBJECT: Changing deadlines for affidavits and counteraffidavits relating to services

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 6 ayes — Leach, Farrar, Krause, Meyer, Smith, White

3 nays — Y. Davis, Julie Johnson, Neave

WITNESSES: For — Paul Huckabay, Aggregate Haulers I LP; Brian Jackson, Texas Alliance for Patient Access; Mike Hendryx, Texas Association of Defense Council; (*Registered, but did not testify*: Michael Stewart, Aggregate Transportation Association of Texas; Joe Woods, American Property Casualty Insurance Association; Jonathan Kennemer, CKJ Transport; James Grace Jr., CNA Insurance Companies; Kate Buecker, Gulf Intermodal Services; James Mathis, Houston Methodist Hospital; Lee Loftis, Independent Insurance Agents of Texas; Mike Toomey, Liberty Mutual; John Mondics, Mondics Insurance Group Inc; Paul Martin, National Association of Mutual Insurance Companies; Tanya Renee Schultz, RS Equipment Co. dba Hotsy Carlson Equipment; Kinnan Golemon, Shell Oil Company; Michelle Apodaca, Tenet; Lee Parsley, Texans for Lawsuit Reform; Jon Opelt, Texas Alliance for Patient Access; James Hines, Texas Association of Business; Michael Garcia, Texas Association of Manufacturers, Texas Medical Liability Trust; Hector Rivero, Texas Chemical Council; George Christian, Texas Civil Justice League; John W Fainter Jr, Texas Civil Justice League; Carol Sims, Texas Civil Justice League; Cesar Lopez, Texas Hospital Association; Jill Sutton, Texas Osteopathic Medical Association; John Esparza, Texas Trucking Association; Robert Fuentes, The Fuentes Firm, P.C.; Lucas Meyers, The Travelers Companies, Inc. and Subsidiaries; Robert McDowell, W. M. Dewey & Son, Inc.; Tiffany Young)

Against — Will Adams, Texas Trial Lawyers Association

BACKGROUND: Civil Practice and Remedies Code sec. 18.001 provides that an affidavit that the amount charged for a service was reasonable and that the service was necessary is sufficient evidence to support a finding of fact that the amount charged was reasonable and that the service was necessary, unless

a controverting affidavit is served.

A party offering an affidavit must serve a copy of the affidavit on each other party at least 30 days before the day on which evidence first is presented at the trial. A counteraffidavit must be served within 30 days after the party receives a copy of the affidavit or at least 14 days before the day on which evidence first is presented at trial. However, the court may give leave for a counteraffidavit to be filed at any time before the commencement of evidence at trial.

Texas Rules of Civil Procedure 195.2 requires a party to designate an expert by the later of 30 days after a request for disclosure of information regarding a testifying expert is served or:

- 90 days before the end of the discovery period, for experts testifying for a party seeking affirmative relief; or
- 60 days before the end of the discovery period, for all other experts.

DIGEST:

CSHB 1693 would change the deadlines for serving an affidavit and counteraffidavit regarding the cost and necessity of a service. These deadlines could be altered by agreement or with leave of the court.

Affidavit. The bill would require that an affidavit be served by the earlier of 90 days after the date the defendant filed an answer or the date the offering party was required to designate expert witnesses under court order or under the Texas Rules of Civil Procedure (TRCP).

If services first were provided more than 90 days after the date the defendant filed an answer, the party offering the affidavit would have to serve the affidavit by the date the offering party was required to designate expert witnesses under the TRCP.

Counteraffidavit. A counteraffidavit controverting a claim reflected in an affidavit would have to be served by the earlier of 120 days after the date the defendant filed an answer or the date the party offering the counteraffidavit was required to designate expert witnesses under court order or under the TRCP.

A counteraffidavit controverting a claim in an affidavit regarding services first provided more than 90 days after the defendant filed an answer would have to be served by the later of 30 days after the affidavit was served or the date the party offering the counteraffidavit was required to designate expert witnesses under the TRCP.

Continuing services. If continuing services were provided after a deadline described above, an affidavit could be supplemented no later than the 60th day before the beginning of trial and a counteraffidavit could be supplemented no later than the 30th day before the beginning of trial.

Causation. An affidavit or counteraffidavit could not be used to support or controvert the causation element of a cause of action.

Notice. Parties serving an affidavit or counteraffidavit would be required to file a notice with the clerk of the court that the affidavit or counteraffidavit were served in compliance with applicable law.

The bill would take effect September 1, 2019, and would apply to an action commenced on or after that date.

SUPPORTERS SAY:

CSHB 1693 would improve the fairness of using affidavits to establish the cost and necessity of services by giving defendants more time to evaluate affidavits and determine whether to serve counteraffidavits. The bill also would clarify that affidavits and counteraffidavits only pertained to whether charges were reasonable and necessary and had no bearing on the causation element of a cause of action.

The current practice of using these affidavits allows the parties to know early on in a case whether such things as medical bills are reasonable and necessary. This allows the parties to come to a resolution sooner or work up the case more efficiently for trial.

However, these affidavits are being abused by some attorneys who serve affidavits too early or too late in a case. If affidavits are served too early in a case, defendants often do not have time to conduct discovery regarding the cost and necessity of services under the current rules. As a result,

defendants may have to file counteraffidavits in order to be able to present evidence on the issue at trial, even though the defendants do not know whether they dispute the claims being made in the affidavit.

On the other hand, if affidavits are served too late in a case, defendants could be required to obtain the leave of court to designate expert witnesses to refute the affidavit or pre-designate an expert witness if they think that an affidavit will be filed shortly before trial.

CSHB 1693 would prevent this abuse by giving defendants more time to determine whether a counteraffidavit was warranted while balancing the need to promote the early resolution and the efficient preparation of cases.

OPPONENTS SAY:

CSHB 1693 would not provide enough opportunity for a party to examine opposing expert witnesses or use the party's own expert witness to refute a claim raised by an expert in an affidavit.